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10/764,001	01/23/2004	Nicholas G. Duffield	Duffield 2003-0207	8944
7590 Henry T. Brendzel P.O. Box 574 Springfield, NJ 07081				
EXAMINER				
MAIS, MARK A				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on September 16, 2008 have been fully considered but they are not persuasive.
2. With respect to claim 1, Applicants state that Jorgensen et al. does not disclose a bona fide teaching of Class(es) of Service and/or Quality of Service **[See Applicants' Request for Reconsideration dated 16 September 2008, page 5, paragraph 5 to page 6, paragraph 3]**. Specifically, Applicants state that the disclosed QoS mapping only pertains to classes of service **[See Applicants' Request for Reconsideration dated 16 September 2008, page 6, paragraph 3]**. Applicants argue, apparently, that since Jorgensen et al. discloses an IP-centric system, it cannot disclose assigning a packet to a preselected QOS treatment based on an attribute of the packet, in accordance with a set of rules created pursuant to a statistical analysis of network traffic **[See Applicants' Request for Reconsideration dated 16 September 2008, page 6, paragraphs 3-4]**. Applicants argue, apparently, that the differentiated services disclosed in Jorgensen et al. cannot be related to any type of statistics, statistical analyses, assignment of packets, or rules **[See Applicants' Request for Reconsideration dated 16 September 2008, page 7, paragraph 3 to page 8, paragraph 1]**. Applicants make the same arguments for claims 13 and 14 **[See Applicants' Request for Reconsideration dated 16 September 2008, page 7,**

**paragraph 3 to page 8, paragraph 6 to page 9, paragraph 1].** The examiner respectfully disagrees.

3. First, as noted above in the rejection of claim 1, differentiated service classes are statistically categorized according to types, qualities, and classes of service. Moreover, the assignment of differentiated service classes are based on rules at least associated with priority, quality, and cost. Packet assignments are based on speed and latency—for example—which are directly and indirectly derived/based on packet attributes [e.g., voice packets have low latency thresholds and are assigned higher priority QOS treatments than data packets].

4. Second, Applicants have characterized Jorgensen et al. in a manner that is inconsistent with the clear meaning of the reference. For example, Jorgensen et al. states that “it is desired that...the system use all of the methods [e.g., traffic shaping; differentiated congestion management] to differentiate traffic into classes of service and map these classes of service against a QOS matrix...to simplify...the QOS mechanism.” **[Jorgensen et al., col. 15, lines 9-17].** This QOS assignment mechanism is meant for packets. Without this QOS assignment mechanism, Jorgensen et al. cannot conform to service guarantees, service level agreements, classes of service, and QOS **[See for example, col. 15, lines 9-17].** Specifically—without packet assignment—the system cannot provide this QOS mechanism.

5. As another example, Jorgensen et al. states that “several methods can be used...to implement differentiated services.” **[Jorgensen et al., col. 15, lines 9-17].** These differentiated services are

based on rules which are empirically collated according to multiple analyses [See, for example, **traffic shaping; differential congestion management; col. 15, lines 9-17**]. Specifically—without rules—the system cannot perform functions such as traffic shaping or differential congestion management in the network. Moreover—without analyses (e.g., statistical analyses)—there can be no rules (or application of such rules) for functions such as traffic shaping or differential congestion management in the network. The examiner asserts that analyses include statistics, differentiation, integration, measurement, etc.

6. Third, despite the examiner's previous response, Applicants argue that the examiner has not disagreed with Applicants' arguments [See Applicants' Request for Reconsideration dated 16 September 2008, page 7, paragraph 2]. The examiner respectfully disagrees and directs Applicants to the "Response to Arguments" section in the Final Office Action dated May 16, 2008.

7. With respect to claim 1, Applicants argue, apparently, that the assignment of packets based on speed and latency [acknowledged by Applicants as packet attributes], cannot be characterized as a rule [See Applicants' Request for Reconsideration dated 16 September 2008, page 8, paragraph 3]. The examiner respectfully agrees and directs Applicants to the responses above.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK A. MAIS whose telephone number is (571)272-3138. The examiner can normally be reached on M-Th 5am-4pm.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing F. Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 6, 2008

/Mark A. Mais/  
Examiner, Art Unit 2419

/Wing F. Chan/  
Supervisory Patent Examiner, Art Unit 2619  
10/8/08